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Hung Chang Lin
8 Schindler Court
Silver Spring, MD 20903

In re Application of:
Bily Wang et al.
Serial No.: 09/922,688
Filed: August 7, 2001
Attorney Docket No.: Harvatek-9030

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DECISION ON PETITION TO
WITHDRAW THE HOLDING
OF ABANDONMENT

The letter submitted on December 18, 2003 entitled ABANDONMENT/APPEAL is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181.

The petition is **DENIED**.

A Notice of Abandonment was mailed on December 4, 2003. The Notice of Abandonment stated that the application was abandoned for failure to timely file a proper reply to the Office action mailed on January 15, 2003.

Petitioner notes that an Appeal Brief originally filed on September 3, 2002 was resubmitted on February 24, 2003 and received at the USPTO on March 3, 2003. However, the resubmission of the previously filed Appeal Brief was not a proper reply to the final Office action mailed on January 15, 2003.

Irregardless of the fact that between the time the Appeal Brief was originally filed and the time it was resubmitted, the amendment filed on October 20, 2002 cancelled claims 1-6 and 13 and amended claims 7, 9, 14, 16 and 17, an appeal brief without a notice of appeal is not a proper reply to a final Office action.

RULES AND REGULATIONS

37 C.F.R. § 1.113(a) states in pertinent part:

On the second or any subsequent examination or consideration by the examiner the rejection or other action by the examiner may be made final, whereupon *applicant's . . . reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title)*, or an amendment as specified in § 1.114 or § 1.116. (Italics added).

37 C.F.R. § 41.31(a)(1) states:

Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

37 C.F.R. § 41.37(a)(1) states:

Appellant must file a brief under this section within two months from the date of filing the notice of appeal under 37 C.F.R. § 41.31.

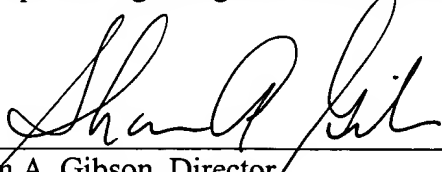
CONCLUSION

As indicated in the above rules, an appeal is begun by the filing of a notice of appeal not by the filing of an appeal brief. The Notice of Appeal filed on September 3, 2002 began the appeal of the final Office action mailed May 29, 2002, it had nothing to do with an appeal of the final Office action mailed January 15, 2003.

Once the six month maximum statutory period expired without a proper reply being filed under 37 C.F.R. § 1.113(a) to the final Office action mailed January 15, 2003, this application became abandoned by operation of law under 35 U.S.C. 133. The effective date of the abandonment was three months from the final Office action mailed January 15, 2003.

Accordingly, the petition is **DENIED** and the application remains abandoned. Applicant may wish to consider the filing of a petition to revive under 37 C.F.R. 1.137.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



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